

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA

v.

GREGORY COLBURN, et al.,

Defendants.

No. 19-CR-10080-NMG

**DEFENDANTS' SUPPLEMENTAL PROPOSED JURY INSTRUCTION ON  
INTENT TO JOIN CONSPIRACY**

The Defendants respectfully request that the Court provide a supplemental instruction on “conspiracy: evidence of intent” as set forth below:

**Proof that either of the defendants willfully joined in the conspiracy  
must be based upon evidence of their own actions and/or words.**

Notably, the government has proposed nearly the exact same instruction at page 20 of their proposed jury instructions, (Dkt. 2014), except that the words “either of the defendants” have replaced the words “the defendants” and the word “conspiracy” has replaced the word “agreement” in the Defendants’ proposed instruction.

The instruction is nearly verbatim of First Cir. Pattern Instructions 4.18.371(1) (“Proof that [defendant] willfully joined in the agreement must be based upon evidence of [his/her] own words and/or actions.”). The First Circuit wrote of these instructions, “The quoted language from the pattern instruction, though not found verbatim in any of our cases, is a correct statement of the law. A conspiracy conviction requires that a defendant’s ‘membership in the conspiracy be proved on the basis of his own words and actions (not on the basis of mere association or knowledge of wrongdoing).’” *United States v. Richardson*, 225 F.3d 46, 53 (1st Cir. 2000). See also *United States v. Rodas*, 523 F. App’x 731, 734 (1st Cir. 2013) (“And any possible prejudice

was cured by the district court's careful limiting instruction that the jury consider the charges against each defendant individually and require proof of his membership in the conspiracy by 'evidence of the Defendant's own words or actions.'").

Dated: October 4, 2021

Respectfully submitted,

GAMAL ABDELAZIZ

By his attorneys,

*/s/ Brian T. Kelly*

Brian T. Kelly (BBO # 549566)  
Joshua C. Sharp (BBO # 681439)  
Lauren A. Maynard (BBO # 698742)  
NIXON PEABODY LLP  
53 State Street  
Boston, MA 02109  
617-345-1000  
bkelly@nixonpeabody.com  
jsharp@nixonpeabody.com  
lmaynard@nixonpeabody.com

Robert Sheketoff (BBO # 457340)

One McKinley Square

Boston, MA 02109

(617) 367-3449

Robert Sheketoff (BBO # 457340)

One McKinley Square

Boston, MA 02109

617-367-3449

JOHN WILSON

By his attorneys,

*/s/ Michael Kendall*

Michael Kendall (BBO # 544866)  
Lauren M. Papenhausen (BBO # 655527)  
WHITE & CASE LLP  
75 State Street  
Boston, MA 02109-1814  
(617) 979-9300  
michael.kendall@whitecase.com  
lauren.papenhausen@whitecase.com

Andrew E. Tomback (pro hac vice)

MCLAUGHLIN & STERN, LLP  
260 Madison Avenue  
New York, NY 10016  
(212) 448-1100  
atomback@mclaughlinstern.com

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing was filed electronically on October 4, 2021, and thereby delivered by electronic means to all registered participants as identified on the Notice of Electronic Filing.

*/s/ Joshua C. Sharp*  
Joshua C. Sharp